

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2013-239-C**

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF TEMPO TELECOM, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF SOUTH CAROLINA</b>	)	<b>MOTION TO WAIVE THE HEARING AND FOR EXPEDITED REVIEW OF APPLICATION</b>

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Tempo Telecom, LLC (“Tempo” or “Applicant”) filed an Application for designation as an Eligible Telecommunications Carrier (“ETC”) for the limited purpose of offering Lifeline service on June 12, 2013, and an Amendment to the Application on July 26, 2013. Tempo moves pursuant to S.C. Code Ann. Regs. 103-829 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”) that the Commission perform an expedited review of the Application as amended. The Applicant requests that the Commission use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. In support of this motion Tempo would show the following:

1. Tempo seeks designation as an ETC throughout the proposed South Carolina services areas to receive federal low-income universal service support for its Lifeline pre-paid wireless services.

2. Tempo published notice of the filing of the Application in area newspapers as required by the Commission. The deadline for filing petitions to intervene in the proceeding was July 22, 2013. The South Carolina Office of Regulatory Staff (“ORS”) is the only intervenor in this proceeding. The Applicant and ORS (collectively referred to as the “Parties” or sometimes individually as a “Party”) have resolved all issues between them in this docket. ORS does not

oppose Tempo's designation as an eligible telecommunications carrier. A Stipulation entered into between Tempo Telecom and ORS was filed with the Commission on August 28, 2013. ORS has also indicated that it does not object to this motion.

3. Tempo filed the verified direct testimony of Gregory Corwin in support of the Application as amended on August 8, 2013. Mr. Corwin is the Director of Marketing for Tempo. Tempo is owned by the same ultimate owners as Birch Telecom of the South, Inc. ("Birch Telecom"). Tempo also has the same corporate officers, management, and day-to-day personnel as Birch Telecom. Birch Telecom and Birch Communications, Inc. are certificated to provide telecommunications services in South Carolina. Tempo requests that the Application and direct testimony be admitted into the record of this proceeding.

4. Tempo is informed and believes that there are no issues in dispute between the Parties, and the Application and testimony filed with the Commission offer a complete record sufficient to form the basis for an ultimate determination in this matter.

### **ARGUMENT**

5. The Applicant filed its Application pursuant to 47 U.S.C.A. § 214(e), the implementing rules of the FCC, and 26 S.C. Code Ann. Regs. 103-690 (Supp. 2012). Section 214(e) and 26 S.C. Code Ann. Regs. 103-690(C) provide that a State commission shall upon its own motion or upon request designate a common carrier that meets the requirements as an eligible telecommunications carrier for a service area designated by the State commission. Neither 47 U.S.C.A. § 214(e) nor 26 S.C. Code Ann. Regs. 103-690 (Supp. 2012) specifically require the Commission to conduct a formal hearing in order to make this determination. In addition, the FCC approves petitions for ETC designation without holding a formal hearing.

6. The Applicant seeks expedited review of its Application on the grounds that (1)

due process requirements are satisfied if the Applicant waives the right to a hearing when there is no disputed material issue of fact and (2) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection.

7. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." *Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); *Anonymous v. State Board of Medical Examiners*, 473 S.E.2d 870 (S.C. Ct. App. 1996) citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

8. The Administrative Procedures Act ("APA") provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. Section 1-23-320(a) (Supp. 2012). The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2012). Notice of the Application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided. ORS does not object to the motion. The Applicant respectfully requests that the Commission dispose of the proceeding without requiring a formal hearing.

9. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296. The Applicant is requesting the hearing be waived and there are no intervenors opposing its

designation as an ETC. Therefore, there is no material issue of fact to be decided at a formal hearing.

10. Tempo presented information on the proposed transaction in its Application as amended and the verified direct testimony of Mr. Corwin. While Tempo wishes to be responsive to the Commission, it would also like to avoid the expense of a hearing and begin transacting business as an ETC as soon as possible; and therefore, requests that the Commission grant expedited consideration of this Application. Tempo has consulted with counsel for ORS. ORS does not object to the request. Of course, if there are issues that the Commission believes remain unresolved, Tempo would welcome the opportunity to provide whatever information the Commission deems appropriate by whatever means the Commission desires, including the presentation of live testimony.

WHEREFORE, Tempo respectfully requests that the Commission informally dispose of the proceeding without holding a hearing, accept the Application as amended and verified testimony into the record, and grant its request for designation as an Eligible Telecommunications Carrier.

Dated this 29<sup>th</sup> day of August, 2013.

ROBINSON, McFADDEN & MOORE, P.C.

By 

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